6-1-1949

Constitutional Law -- Unreasonable Search and Seizure -- Partnership Records

CONSTITUTIONAL LAW—UNREASONABLE SEARCH AND SEIZURE—PARTNERSHIP RECORDS

The Anti-Trust Division of the Department of Justice secured a subpoena duces tecum, returnable before the federal grand jury, directed to only one member of a partnership, requiring him to bring with him certain specified records and communications of the partnership. Subsequently, the other partners, not subpoenaed, in order to defeat the Government's purpose of using the documents against them moved to quash the subpoena on the grounds that the documents described therein constituted the private papers and property of each of the partners, the production of which would constitute an unreasonable search and seizure under the Fourth Amendment and a violation of their privilege against self-incrimination under the Fifth Amendment to the Federal Constitution. *Held,* motion to quash granted. The partnership papers are the personal property of each of the partners and the subpoena issued to one partner, although not violative of the Fifth Amendment, works an unreasonable search and seizure of the private papers of the unserved partners under the Fourth Amendment. In re *Subpoena Duces Tecum,* 81 F. Supp. 418 (S. D. Cal. 1948).

In sustaining the motion to quash solely on the ground of the Fourth Amendment,[1] the court dismisses the unsubpoenaed partners' claim of their privilege against self-incrimination [2] by recourse to the well-established principle that such claim is the personal privilege of the party subpoenaed, the person who, under oath, is required to be a witness against himself.[3]

The guaranty against unreasonable search and seizure is designed to prevent violations of private security of persons and property, and to prohibit unlawful invasions of those rights.[4] Although the constitutional provision is generally invoked in the case of search warrants, the compulsory production of private books and papers, via a subpoena duces tecum, is within the spirit and meaning of the Fourth Amendment.[5] However, the constitutional prohibition of the search and seizure clause was not intended to interfere with the power of the courts to compel, through a subpoena duces tecum, the production of documentary evidence.[6] The immunity provided is not from all searches and seizures, but from unreasonable searches and seizures only.[7] The substance

1. U. S. CONST. AMEND. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .").
2. U. S. CONST. AMEND. V ("No person . . . shall be compelled in any criminal case to be a witness against himself. . . .").
3. United States v. White, 332 U. S. 694 (1944).
4. Adams v. New York, 192 U. S. 585 (1904); Burdeau v. McDowell, 256 U. S. 465 (1921).
5. Boyd v. United States, 116 U. S. 616 (1886).
6. Hale v. Henkel, 201 U. S. 43 (1906).
7. Carroll v. United States, 267 U. S. 132 (1925); Agnello v. United States, 296 U. S. 20 (1923).

of the offense of an unreasonable search and seizure is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person is entitled to protection.[8]

This right of protection from an unreasonable search and seizure is a personal one and can be asserted only by the party whose rights are being violated.[9] Although a corporation is not protected against self-incrimination,[10] it is entitled to protection against unreasonable searches and seizures of its papers under the Fourth Amendment,[11] in as full a measure as given to an individual or partnership.[12] However, a corporation cannot object to the production of the corporate books in a proper case [13] where the writ is suitably specific and properly limited in scope;[14] nor can a corporate officer object even though the production of the corporate documents will disclose the guilt of the officer.[15] Because of the broad visitorial powers of the Federal Government over corporations, the protective provisions of the Fourth Amendment have a more limited application in the compulsory production of corporate books and papers than they do with reference to the private papers of individuals.[16] Nevertheless, the exercise of these visitorial powers over private and public corporations must keep within the restrictions of the Fourth Amendment.[17] For the subpoena may be so general,[18] the search and seizure so unlawful,[19] or the supoena duces tecum so onerous as to work an unreasonable search and seizure against which the corporation is protected.[20]

The Fourth Amendment only protects the owner or claimant of the property subjected to the unreasonable search or seizure.[21] Hence, in the instant case, in rejecting the Government's contention that the partnership

---

8. Boyd v. United States, *supra*.
9. Kelley v. United States, 61 F.2d 843 (C. C. A. 8th 1932); United States v. DeVasto, 52 F.2d 26 (C. C. A. 2d 1931), *cert. denied*, 284 U. S. 678 (1931).
10. Hale v. Henkel, *supra*.
11. Silverthorne Lumber Co. v. United States, 251 U. S. 385 (1920).
12. Federal Trade Commission v. Lorillard Co., 283 Fed. 999 (D. C.2d N. Y. 1922).
13. Grant v. United States, 227 U. S. 74 (1913); Wheeler v. United States, 226 U. S. 478 (1912); *accord*, Thompson v. United States, 10 F.2d 781 (C. C. A. 7th 1926), *cert. denied*, 270 U. S. 654 (1926) (A co-partnership, illegally masquerading as a corporation, was, before discovery of its status, compelled by a subpoena duces tecum to produce its books and papers; such production held not a violation of the Fourth Amendment).
14. Hale v. Henkel, *supra*; Wheeler v. United States, *supra*.
15. Wilson v. United States, 221 U. S. 361 (1911); Essgee Co. v. United States, 262 U. S. 151 (1923).
16. Essgee Co. v. United States, *supra*.
17. Interstate Commerce Commission v. Brimson, 154 U. S. 447 (1894); Federal Trade Commission v. Lorillard Co., *supra*.
18. Consolidated Rendering Co. v. Vermont, 207 U. S. 541 (1908); Hale v. Henkel, *supra*.
19. Silverthorne Lumber Co. v. United States, *supra*.
20. Federal Trade Commission v. American Tobacco Co., 264 U. S. 298 (1924); McMann v. Securities & Exchange Commission, 87 F.2d 377 (C. C. A. 2d 1937), *cert. denied*, 301 U. S. 684 (1937).
21. Graham v. United States, 15 F.2d 740 (C. C. A. 8th 1926); Coon v. United States, 36 F.2d 164 (C. C. A. 10th 1929); Huhman v. United States, 42 F.2d 733 (C. C. A. 8th 1930).

was an entity distinct from its members[22] and that the partnership papers were therefore the property of the firm, the court re-examines the fundamental nature of the partnership relation as contrasted with that of the corporation or unincorporated association, and holds that papers of the small family partnership here involved belong to the partners as tenants in common. In accepting the aggregate theory of partnership, the court is in accord with the view of the jurisdictions which adopt the definition of partnership set forth in the Uniform Partnership Law.[23] In holding that the papers and books subpoenaed are the property of each of the partners and that to compel their production upon serving only one partner constitutes an unreasonable search and seizure of the property of the others, the decision is in accord with early Supreme Court cases holding that the compulsory production of one's private papers for use in criminal proceedings is compelling him to be a witness against himself and is *equivalent* to an unreasonable search and seizure within the meaning of the Fourth Amendment.[24]

As the determination of what is an "unreasonable search and seizure" is a judicial question[25] to be determined by the facts and circumstances of each case,[26] this decision may not be considered a binding precedent in the case of a large unincorporated association, e.g., a labor union, or, possibly, partnerships of large numbers, or partnerships in which there are special and limited as well as general partners. Such large bodies may be considered more analogous to corporations than to individuals, or small family partnerships, in which case the Fourth Amendment will not be as liberally construed in their favor.

DOMESTIC RELATIONS—GRANTING OF ANNULMENT OR SUPPORT WHERE PARTIES HAVE UNCLEAN HANDS

Petitioner, second husband of respondent, sought an annulment on grounds of respondent's prior subsisting marriage. Petitioner had knowledge prior to marriage to respondent that the divorce decree obtained by respondent's first husband was of the Mexican mail-order variety and void for want of jurisdiction. In the lower court, respondent's counter-claim for support for herself and the child of the disputed marriage was allowed, but the petitioner's request for annulment was denied. *Held,* on appeal, that the

22. Francis v. McNeal, 228 U. S. 695 (1913); Horner v. Hamner, 249 Fed. 134 (C. C. A. 4th 1918) (under the Federal Bankruptcy Act, a partnership is treated as a distinct entity).

23. UNIFORM PARTNERSHIP ACT § 6(1); Abbott v. Anderson, 265 Ill. 285, 106 N. E. 782 (1914) (a partnership is not an entity distinct from its members).

24. Gouled v. United States, 255 U. S. 132 (1921); Boyd v. United States, *supra.*

25. United States v. Vatune, 292 U. S. 497 (1923).

26. Peru v. United States, 4 F.2d 881 (C. C. A. 8th 1925); Go-Bart Importing Co. v. United States, 282 U. S. 344 (1931).